

Adopted February 29, 2008

CMP POLICY & IMPLEMENTATION COMMITTEE MEETING

Richard J. Sullivan Center / Terrence D. Moore Lecture Hall

15C Springfield Road

New Lisbon, New Jersey

January 25, 2008

MINUTES

MEMBERS IN ATTENDANCE: Chairperson Betty Wilson, Vice-Chairman Norman Tomasello, Candace Ashmun, Leslie Ficcaglia, Stephen Lee, John Haas (1st Alternate), and Robert Hagaman (3rd Alternate)

MEMBERS ABSENT: Ed Lloyd and Robert W. McIntosh

STAFF PRESENT: John Stokes, Larry Liggett, Susan Grogan, Stacey Roth, Paul Leakan, Tom Stanuikynas, Christine Graziano, and Betsy Piner

Chairperson Wilson called the meeting to order at 9:30 a.m.

1. Adoption of minutes from the January 7, 2008 CMP Policy and Implementation Committee meeting.

Commissioner Tomasello moved the adoption of the minutes of the January 7, 2008 CMP Policy and Implementation Committee meeting. Commissioner Ficcaglia seconded, noting a correction on p. 11 (the insertion of the word “than” in the third paragraph from the bottom so that the sentence will now read: *...intensive use on those parcels **than** if they were developed...*). Commissioner Tomasello agreed to the correction and all voted in favor.

Mr. Stokes announced that, unless additional Commissioners were to arrive, both alternate Committee members, Commissioners Haas and Hagaman, would be able to vote today.

2. Executive Director’s Reports

Galloway Township Ordinance 1735-2007, amending Chapter 233 (Land Management) of the Township’s Code by establishing staggered setback requirements in the R and R1 (Regional Growth – Residential) Districts and adopting revised front yard setback requirements for corner lots

Ms. Graziano said that in 2007, Galloway Township had adopted Ordinance 1704-2007 which, among other things, adopted revised definitions related to corner lots, established staggered setback standards for residential development, and adopted revised front yard setback requirements for corner lots within the R and R-1 Districts, both of which are

located in the Pinelands Regional Growth Area (RGA). Following receipt of public testimony, the Township requested that the Commission delay action on Ordinance 1704-2007 to allow the Township to further revise the ordinance. As a result, Galloway adopted Ordinance 1735-2007 to replace Ordinance 1704-2007 and address public comment regarding the impact on corner lots, that of a reduced setback which had been characterized as limiting the building envelope to an unacceptable size.

While staff believes that the initial iteration had virtually no impact on density or PDC use, the Township elected to address the concerns by eliminating a mandatory secondary front yard setback of no less than 30' and allowing for a setback reduction based on lot width, e.g. 20' on lots 70' wide or less, resulting in a 30' wide building envelope. In its evaluation, staff continues to find that Ordinance 1735-2007 will have no effect on density or the use of PDCs.

Commissioner Ashmun moved the recommendation to the Commission of certification of Galloway Township Ordinance 1735-2007. Commissioner Tomasello seconded and all were in favor.

Hamilton Township Ordinances 1608-2007 and 1613-2007, amending Chapter 203 (Land Use and Development) of the Township's Code by eliminating the RD/RGD (Rural Development/Reserve Growth District) Zone and rezoning all lands contained therein to the GA-L (Growth Area – Low), RD-5 (Rural Development) and newly created RD-20 (Rural Development) Zones

Mr. Stanuikynas said that Hamilton Township's municipal reserve district (Rural Development/Reserve Growth District; RD/RGD) constituted some 2500 acres and had been established as a means of phasing in development of the Township's RGA by specifying development criteria which would allow the automatic conversion of lands from the RDA to RGA standards unless certain findings were made that such criteria had not been met. In February 10, 2006, the Commission adopted a set of CMP amendments revising the standards for development within municipal reserves and Hamilton Township has responded by choosing to eliminate the RD/RGD District and rezone all lands therein to the Growth Area-Low (GA-L) District in the RGA, the RD-5 District in the Rural Development Area or the new RD-20 District in the RDA.

From a map, Mr. Stanuikynas identified the portion of the Township to be rezoned and noted that as most of the current RD/RGD District is wetlands and half of it is publicly owned, the likelihood of development at RGA intensities is small. The newly designated RGA zone consists of two areas adjacent to current RGA and in proximity to sewer/water service. The RDA zones encompass areas of existing 5-acre lots (the RD-5 District) with some development potential or, in recognition of the environmentally sensitive portion of the former RD/RGD, the new RG-20 District reflects the limited development potential by allowing residential development at a density of 1 du/20 acres and some other limited uses.

Commissioner Ficcaglia moved the recommendation to the Commission of the certification of Hamilton Township Ordinances 1608-2007 and 1613-2007. Commissioner Tomasello seconded and all were in favor.

Manchester Township's January 2006 Master Plan Amendments and Ordinance 07-018, amending Chapter 325 (Land Use and Development Regulations) of the Township's Code by establishing the PED-1 and PED-9 (Planned Environmental Development) Districts and the PRC-1 (Pinelands Retirement Community) District for purposes of implementing a builders remedy consent order and stipulation of settlement as well as the Regional Natural Resource Protection Plan for the Toms River Corridor

Ms. Grogan reviewed Manchester Township's 2006 Master Plan amendments and Ordinance 07-018 noting that Manchester Township has implemented the final piece of the recommendations of the Toms River Corridor Regional Natural Resource Protection Plan by creating the PED (Planned Environmental Development) Districts (PED-1 and PED-9) and PRC-1 (Pinelands Retirement Community) District along the boundary with Jackson Township. She asked the Committee to recall the recent certification of the same PED Districts on contiguous and commonly owned property just across the border in Jackson Township. Manchester Township Ordinance 07-018 provides for the clustering of units from Jackson Township onto the Manchester side of the boundary.

Ms. Grogan provided other details related to density, permitted uses, and the clustering and wildlife corridor provisions to maximize the protection of threatened and endangered species habitat. Other provisions include the implementation of a 30% reduction in zoning capacity in the RGA in response to CMP amendments for which the Township has submitted the appropriate substantiating documentation. In the PRC-1 (Pinelands Retirement Community) District, the maximum number of units is specified in accordance with a settlement agreement and the numbers of permitted market rate and affordable housing units are designated. In both the PED-1 and PED-9 Zones, PDC use will be required for 30 percent of the market rate units.

Referencing the zoning capacity, Ms. Grogan said that the resulting plan is several hundred units below the target number for the Township but staff believes that the settlement agreement must be recognized as the determining factor in the amount of development which will occur.

In response to a question from Commissioner Ashmun, Ms. Grogan confirmed that if a planned retirement community is developed in the PED-1 Zone, a deed restriction (the conservation easement that was recommended in the Toms River Plan) will be placed on the appropriate contiguous lands in Jackson and Manchester's PED-9 Zones with no further development permitted.

In response to a question from Commissioner Lee if there were other areas of the Township where density might be increased to compensate for the loss of density in the

area of the Township subject to the settlement agreement, Ms. Grogan said that unfortunately the staff saw little opportunity to expand the RGA or increase density elsewhere in the Township.

Commissioner Haas moved the recommendation to the Commission of the certification of Manchester Township's January 2006 Master Plan amendments and Ordinance 07-018. Commissioner Ashmun seconded and all were in favor.

Upper Township Resolution SP05-06, adopting a 2006 Master Plan Reexamination Report, Stormwater Management Plan, Land Use Plan Amendment and Housing Element and Fair Share Plan, and Ordinances 015-2006 and 009-2007, amending the Township's Code by adopting revised stormwater management standards and application requirements, adding cluster development as a conditional use in the Forest and Rural Development Areas, establishing a revised density transfer program , adopting a revised zoning map and implementing the Township's petition for plan endorsement for that portion of the municipality located in the Pinelands National Reserve but outside the Pinelands Area

Ms. Grogan introduced Upper Township Engineer, Mr. Paul Dietrich in the audience.

Ms. Grogan said that the Pinelands Commission has no direct regulatory control over the overlap area, the lands within the federally designated Pinelands National Reserve and outside the Pinelands Area but the Commission is the designated planning entity. She said that as part of securing Plan Endorsement through the State Planning Commission, Upper Township is seeking consistency on both sides of the boundary and asked the Commission for certification of the overlap area. Upper is the fourth municipality to do so and it is helpful to the Commission in terms of reviewing CAFRA permits as it avoids confusion.

Mr. Stokes said that, following Commission certification, the Commission will notify NJ DEP and then a notice will be published in the New Jersey Register, allowing the coastal centers to take effect.

Ms. Grogan said that the Township is to be congratulated for persevering through a complicated and lengthy process.

Ms. Grogan said that one unique element of Upper's proposal is the creation of a density transfer program (DTP) that allows development transfer to occur from vacant land in the FA and RDA within the Pinelands Area to the new town centers on Route 9 (outside the Pinelands Area). No additional development will occur in the Pinelands Area; rather, more opportunities to preserve lands in the Pinelands Area will result while facilitating higher density development in the mixed use zones in appropriate locations in the PNR.

Mr. Stokes noted that, under the CMP's normal DTP, the same amount of development occurs, but, in this program, less development will occur in the FA and RDA so this is an added level of protection to the Pinelands Area.

In response to a question from Chairperson Wilson regarding density transfer programs, Ms. Grogan said that DTPs exist in Forest (FA) and Rural Development (RDA) Areas to accommodate undersized lots. Some municipalities have established sending and receiving areas. This is the only program where density is being transferred to other areas, much like the statewide program.

Ms. Grogan said that the last portion of the Township's proposal is that of allowing cluster development in the FA and RDA at the option of the property owner (not mandatory) on lots of a 1-acre minimum. The Township is following a yield plan approach, asking the developer to provide a plan using conventional zoning, taking into consideration environmental constraints. The number of units feasible through conventional zoning then becomes the maximum number of units which can receive approvals through clustering. There is no bonus. The remaining lands become deed restricted to preclude any further development including no recreation, no agriculture and no forestry activities. The open space may be managed by a homeowners association or donated to the Township. Although the CMP allows clustering only to a minimum of 3.2 acres per unit in the Forest Area, staff feels that Upper Township's 1-acre lot size requirement is appropriate, similar to what was approved in Jackson Township within the past year.

Mr. Dietrich said that the Township had prepared a Natural Resource Inventory as part of its application for Plan Endorsement as well as an environmental assessment ordinance requiring developers to prepare environmental impact statements as part of their application process, thus broadening the protection of both the Pinelands and DEP regulated areas. He said that DEP had embraced this pro-active approach and would like to apply it elsewhere.

Commissioner Ficcaglia moved the recommendation to the Commission of the certification of Upper Township Resolution SP05-06 and Ordinances 015-2006 and 009-2007. Commissioner Ashmun seconded and all were in favor.

Commissioner Ashmun said that Upper Township was to be congratulated for all its work and coordination with the State Planning Commission. However, she was concerned with the use of open space lands resulting from cluster development, particularly in the future, as she saw no controls in the ordinance to guarantee their protection. She said that she did not want to hold up the certification process but she felt that the Commission should have a thorough discussion of deed restriction issues.

Mr. Stokes said that the Commission had two roles. As the ordinance is implemented, the developers will submit applications and the deed restrictions become part of the review process. However, a more fundamental question is the need to improve some of the clustering provisions in the CMP. During the process of improving those clustering provisions, the Commission needs to determine the appropriate levels of deed restriction

and stewardship. The Commission's experience is that on-site clustering is not used very frequently because it is of little advantage to the property owner. Upper Township may find it to be the case here but the DTP provision may provide more opportunities for the property owners.

In response to Commissioner Ashmun's concerns that it appeared that deed restricted lands might not be contiguous to the developed lands, Ms. Grogan confirmed that the open space could be in multiple pieces due to the presence of wetlands or other open space parcels.

Mr. Stokes said that whatever the development is, it would need to meet the design and development standards of the CMP and Upper Township. He said that in most cases the open space will be a contiguous piece of protected land but it was possible that the ownership/management might be provided by multiple owners.

In response to a comment from Commissioner Ficcaglia if the Township might want to refine the ordinance in terms of long-range uses of the open space, Mr. Stokes said that there was inadequate time to do so prior to Commission action at the February 8, 2008 meeting. Mr. Stokes added that the Public and Governmental Programs Committee had developed a model conservation easement that can be tailored to individual situations, such as the agreement related to the Ancora facility. He said that staff could provide that to the Township and express some suggestions regarding deed restrictions.

Commissioner Ficcaglia said that she felt the Township's intent was commendable and Commissioner Ashmun added her congratulations.

Stormwater Plan and Ordinance

Little Egg Harbor Township's Stormwater Management Plan dated March 2005 and revised October 2007, and Ordinance 2007-26

Ms. Grogan said that Little Egg Harbor had responded to the May 2006 CMP amendments regarding stormwater. Although no oral testimony was offered at the public hearing, written comment was received expressing ongoing concern with resource extraction operations. Although staff felt that the Township had adequately responded to the amendments, some of the suggestions provided by the commenter in the long and detailed proposed ordinance might have some merit and be worthy of future consideration with respect to resource extraction.

Mr. Stokes said that, although staff did not know if the Township had also received a copy of the letter directly, it would be forwarded to them as part of the report.

Commissioner Haas moved the recommendation to the Commission of the certification of Little Egg Harbor Township's October 2007 Stormwater Management Plan and Ordinance 2007-26. Commissioner Tomasello seconded and all were in favor.

3. Continued discussion of proposed CMP amendments related to cluster development in the Forest and Rural Development Areas

Mr. Liggett made a PowerPoint presentation (*Attachment A*) regarding proposed CMP amendments related to cluster development in the Forest and Rural Development Areas. He noted that his presentation is an expansion of the material provided in the meeting packet in order to demonstrate more recent trends.

Mr. Liggett said that the predominant residential development in the FA and RDA is for a single dwelling. He said that such a pattern demonstrates the need to provide a bonus to developers who assemble lots and promote clustering. He said that currently any clustered development is being done at 1 du/3.2 ac., thus not taking full advantage of the process of clustering.

Mr. Liggett asked why more clustered development had not been done. His response was that analysis is difficult, suitable parcels are too small and there is a limitation imposed by the presence of large chunks of state-owned lands. The goal is to have 1-acre clustering, not 6-acre clustering and one must consider the difference in the value of the lot according to its size. He said that as the size of the lot increases, so the value increases. He said that by offering a bonus starting at a 50-acre parcel, one would encourage the consolidation of smaller lots.

Mr. Liggett discussed the relationship between agriculture and the FA. He said that the Agricultural Production Area (APA) designation in the CMP was determined by the presence of active agriculture and the presence of prime agricultural soils.

Mr. Stokes said that the CMP designated large areas of APA but allows municipalities to designate smaller areas as long as there is *active* agriculture. He said that the Commission wants to recognize existing agriculture in the FA and allow its expansion by 50% but that does not bring into play the location of prime soils. He noted that only 2% of land in the FA is farmland.

Mr. Liggett provided a case study (see Attachment) of a 100 acre parcel in the FA, of which 20 acres is actively farmed. In his example, 8 acres might be developed leaving 92 acres, 20 of which would continue to be farmed and 72 acres would be open space. He noted that what would occur on those 72 acres of open space would be determined by a deed restriction. The P&I Committee would need to discuss further issues such as agricultural commercial uses, agricultural production facilities and farm labor housing not being permitted uses on the site.

Mr. Stokes said that, if the open space becomes the responsibility of a homeowners association or the municipality, the Municipal Land Use Law will determine the uses of the land. He said that the concern about the *stewardship* of the land had led Mr. Michael Bolan to present the option of Open Lands Zoning (*see p. 9 of minutes of CMP P&I meeting of November 28, 2007*).

Mr. Stokes said that, as to the question of agriculture vs. forest, the Commission's interest is in preparing a more viable clustering program in order to preserve the forest. Whatever fragmentation occurs from the existing agriculture should not "poison" the entire clustering proposal. He said that although the Commission might mandate 1-acre zoning, the municipalities should have the option of determining the stewardship of the remaining lands.

Commissioner Ficcaglia cautioned that farmers who developed a portion of their farms and continued farming were "double dipping."

Commissioner Ashmun expressed concern regarding "efficient use of infrastructure" noting that she wanted details about keeping roads out of the Forest Area, siting houses along the road, etc. She said that she didn't need to be convinced of the benefits of cluster development but she wanted more information.

Commissioner Lee said that there are different interests expressed by the Comprehensive Management Plan and the Pinelands Protection Act and, as for double dipping, how is the continuation of farming in the Forest Area on lands where clustered development might occur any different than the "double dipping" on Route 530 where Burlington County purchased PDCs, paid the farmer for an easement, and allowed the farming to continue? He said that the Commission needed to focus on what it meant by stewardship. Is it maintaining wilderness? Wetlands? Cedar swamps? Is it benign neglect?

Commissioner Ficcaglia said that she was concerned about contiguous habitat and Chairperson Wilson added that some of these issues would need to be addressed in the discussions of deed restrictions.

Mr. Stokes said that the staff has begun its internal consideration of restoration, focusing in terms of restoring something to its pre-disturbance condition. He said that staff receives questions periodically about "enhancements", e.g. wildlife management in wetlands and he referenced the work of the Commission with the Fish and Wildlife Service in dealing with phragmites. Staff recommends that the Commission improve upon the clustering provisions in order to protect the resources of the Pinelands. To do so will be better than allowing the existing conditions to prevail.

Commissioner Haas noted that the Committee had not discussed those who would be impacted by stewardship. He asked if the municipalities could pay for this. He said that those involved in management should be involved in these discussions.

Commissioner Lee noted the urgency of the issue because of the rate at which land is being consumed.

Mr. Stokes said that while the Commission will not have a "one size fits all" provision that would remove municipal flexibility, he posed some basic questions:

- Is there confirmation that all Committee members support clustering

- regarding the bonus? Staff believes it should be tied to the size of the property but more details are needed.
- is there a general consensus that if clustering is to work, a bonus is necessary/mandatory?
- what sort of stewardship/what type of uses for the protected lands should be permitted?
- what sort of design standards for the cluster are needed?

Commissioner Ashmun said that in the FA, being *able* to cluster development is enough of a bonus.

Mr. Stokes responded that the money is in the larger estate lots. He said that staff believes that clustering should be mandatory and accepts that fact that some municipalities will be resistant. Large lot development not only fragments the forest but there is less control as to what happens there.

Chairperson Wilson said that there was not yet consensus on a bonus or mandate at this point while Commissioner Ashmun responded that *bonus* and *mandatory* go together.

Commissioner Lee said that there is support for clustering and that if the Commission wants to see it happen, it must be mandated.

Mr. Stokes said that most of the interest and concern centers around the types of permissible uses on the remaining open space. What type of stewardship will occur? Who will be responsible? As for design standards, how does one determine the best location for the cluster? Staff will return with some additional information and ideas at a future meeting, perhaps in March.

Commissioner Hagaman said that he was in favor of clustering. He said that Mullica Township had many large lots and as homes are becoming bigger and bigger, more of those large lots were being cleared. He said that clustering was the best way to keep the lands as natural as possible.

Public Comment

Carleton Montgomery, Executive Director of the Pinelands Preservation Alliance (PPA), referencing the clustering discussion, expressed concern over three issues: if the clearing of a forested property would be defined as agriculture; concern that open space (in a cluster development) not be assigned to a single landowner as, over the generations, there might be little interest in the agreed deed restriction; and, if clustering is mandatory, there is no need for a bonus unless there is an aggregation of parcels that will bring additional lands into the cluster.

Mr. Peter Ferwerda, who had submitted written comment on Little Egg Harbor Township's stormwater ordinance and plan, said that he had been unable to attend the Commission's public hearing due to a personal commitment and he encouraged the

Commission to endorse his recommendations. Mr. Stokes asked the Committee to be cognizant of the established record and asked Mr. Ferwerda to focus on that comment already submitted.

Mr. Michael Bolan asked if the clustered development in FA and RDA would be on standard septic systems. Mr. Stokes responded that they would. Mr. Bolan said that on a 100-ac. parcel, there would be no difference in the impact on water quality if there were 5 SFDs developed, each on 20 acre lots or if there were 5 homes on 1-acre lots with 95 acres in agriculture.

Mr. Harry Monesson, Pemberton Township resident, said that with so much marginal ground in Pemberton Township, farming is very labor intensive. He said that many farmers find that it is just not worth while and have left their fields fallow. Cluster development will be a big service to farmers and might even encourage farming. He said that some commercial uses must be allowed to serve the residential development where clustering occurs.

4. Other Items of Interest

Mr. Stokes said that the draft reports to the National Park Service for the Long Term Environmental and Economic Monitoring Programs had been included in the packets as is done each year. He said that staff awaits news of funding prior to completing the budget details and then the reports and resolution would go before the Personnel and Budget Committee

The meeting adjourned at 12:05 p.m. (Moved by Commissioner Lee and seconded by Commissioner Haas.)

/CS15A

CMP POLICY & IMPLEMENTATION COMMITTEE MEETING

Richard J. Sullivan Center / Terrence D. Moore Lecture Hall
15C Springfield Road
New Lisbon, New Jersey
January 25, 2008

SUMMARY

The Committee adopted the minutes of the January 7, 2008 meeting.

The Committee recommended Commission certification of the following documents:

Galloway Township Ordinance 1735-2007 (establishing setback requirements and adopting revised front yard setback requirements for corner lots)

Hamilton Township Ordinance 1608-2007 and 1613-2007 eliminating the RD/RGD Zone and rezoning all lands contained therein to the GA-L (Growth Area – Low), RD-5 (Rural Development) and the newly created RD-20 (Rural Development) Zones.

Manchester Township's January 2006 Master Plan Amendments and Ordinance 07-018 establishing the PED-1 and PED-9 (Planned Environmental Development) Districts and the PRC-1 (Pinelands Retirement Community) District for purposes of implementing a builders remedy consent order and stipulation of settlement as well as the Regional Natural Resource Protection Plan for the Toms River Corridor

Upper Township Resolution SP05-06, adopting a 2006 Master Plan Reexamination Report, Stormwater Management Plan, Land Use Plan Amendment and Housing Element and Fair Share Plan, and Ordinances 015-2006 and 009-2007, amending the Township's Code by adopting revised stormwater management standards and application requirements, adding cluster development as a conditional use in the Forest and Rural Development Areas, establishing a revised density transfer program, adopting a revised zoning map and implementing the Township's petition for plan endorsement for that portion of the municipality located in the Pinelands National Reserve but outside the Pinelands Area

Little Egg Harbor Stormwater Management Plan and Stormwater Control Ordinance

The Committee continued its discussion of proposed CMP amendments related to cluster development in the Forest and Rural Development Areas. Staff will return with additional suggestions at a future meeting, perhaps in March.